

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



REQUEST FOR PROPOSALS

TEXAS v. NEW MEXICO and COLORADO COUNSEL LEGAL SERVICES

RFP#: 16-305-0501-20048

Released May 20, 2016

Responses Due June 20, 2016

TABLE OF CONTENTS

I. INTRODUCTION

- A. PURPOSE OF THIS REQUEST FOR PROPOSALS
- B. SCOPE OF WORK
- C. SCOPE OF PROCUREMENT
- D. PROCUREMENT MANAGER
- E. DEFINITION OF TERMINOLOGY
- F. DEADLINE FOR PROPOSALS

II. CONDITIONS GOVERNING THE PROCUREMENT

- A. SEQUENCE OF EVENTS
- B. EXPLANATION OF EVENTS
 - 1. Issue of RFP
 - 2. Distribution List Response Due - MANDATORY
 - 3. Deadline to Submit Additional Written Questions
 - 4. Response to Written Questions/RFP Amendments
 - 5. Submission of Proposal – MANDATORY DEADLINE
 - 6. Proposal Evaluation
 - 7. Selection of Finalists
 - 8. Best and Final Offers from Finalists
 - 9. Oral Presentation by Finalists
 - 10. Finalize Contract
 - 11. Contract Award
 - 12. Protest Deadline
- C. GENERAL REQUIREMENTS
 - 1. Acceptance of Conditions Governing the Procurement
 - 2. Incurring Cost
 - 3. Prime Contractor Responsibility
 - 4. Amended Proposals
 - 5. Offerors' Rights to Withdraw Proposal
 - 6. Proposal Offer Firm
 - 7. Disclosure of Proposal Contents
 - 8. No Obligation
 - 9. Termination
 - 10. Sufficient Appropriation
 - 11. Legal Review

12. Governing Law
13. Basis for Proposal
14. Contract Terms and Conditions
15. Offeror's Terms and Conditions
16. Contract Deviations
17. Offeror Qualifications
18. Right to Waive Minor Irregularities
19. Change in Contractor Representatives
20. Notice
21. OAG Rights
22. Right to Publish
23. Ownership of Proposals
24. Electronic mail address required
25. Use of Electronic Versions of this RFP
26. Conflict of Interest.

III. RESPONSE FORMAT AND ORGANIZATION

- A. NUMBER OF RESPONSES
- B. NUMBER OF COPIES
- C. PROPOSAL FORMAT
 1. Proposal Organization
 2. Letter of Transmittal

IV. SPECIFICATIONS

- A. INFORMATION
 1. OAG Resources
 2. Time Frame
- B. MANDATORY SPECIFICATIONS
 1. Corporate Experience
 2. References
 3. Offeror Staff Experience and Proposed Staff References
 4. Compensation and Cost
 5. Subcontractors
 6. Oral Presentation

V. EVALUATION

- A. EVALUATION POINT SUMMARY
- B. EVALUATION PROCESS

VI. APPENDICES

APPENDIX A - ACKNOWLEDGEMENT OF RECEIPT FORM

APPENDIX B - SAMPLE PROFESSIONAL SERVICES CONTRACT

ATTACHMENT 1 - SCOPE OF WORK

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The State of New Mexico Office of the Attorney General is requesting proposals from one or more law firms for advice and aid in all phases and tasks related to Texas v. New Mexico and Colorado, No. 141 Original and related litigation. Such work shall hereafter be referred to as “Texas v. New Mexico and Colorado”. The New Mexico Office of the Attorney General reserves the right to award more than one contract in response to this RFP. Law firms with specialized expertise and experience in interstate water compact litigation are encouraged to submit proposals.

B. SCOPE OF WORK

Summary Scope of Work:

The New Mexico Office of the Attorney General (OAG) duties include representing the State of New Mexico in interstate and other complex water litigation. Further, the OAG has received funding for new and continued litigation concerning New Mexico rivers on which there exists an interstate compact.

Pursuant to Section 8-5-2, NMSA 1978, the New Mexico Attorney General (AG) is empowered to prosecute and defend in court all actions and proceedings, civil or criminal, in which the State may be a party or interested when, in his judgment, the interest of the State of New Mexico requires such action. The AG is also charged with the responsibility to prosecute and defend all actions and proceedings brought by or against the State, any State officer or head of a state department, board or commission, or any employee of the State in his official capacity. Consistent with that authority, the AG’s duties include representing the State of New Mexico in interstate water litigation brought by another State. Further, the OAG has received funding to pursue litigation as the State of New Mexico requires.

The AG may appoint one or more private law firms as outside counsel to work with designated staff of the Office of the Attorney General. Members of the law firm(s) selected by the AG shall, at his discretion, be appointed as Special Assistant Attorneys General and in that capacity will act under the control and direction of the AG. The AG or his designee will be actively involved in all stages of any litigation and will have sole authority over all aspects of the litigation, including, but not limited to, determining whether, when and where to file suit and against which parties; which claims to assert and whether and on what basis to settle or proceed to trial. Private law firm(s) appointed agree to consult with the AG and his designee as soon as possible on all matters related to the representation that may be significant, controversial or otherwise noteworthy.

Private law firm(s) shall give timely written notice to the AG and his designee of any and all pleadings, dispositive motions, rulings, hearings, trials, mediations or settlement negotiations, appeals or notices of appeals and any other legal events relevant to the litigation. Private law firm(s) will be required to meet, coordinate with and submit interim reports to the AG or his designee on a regular basis and as requested regarding the nature, progress, costs and extent of legal services rendered or remaining to be completed. At a minimum, interim status reports will be provided on a quarterly basis and shall include a description of each matter assigned, the particular case involved, its current status, any significant events that have transpired in the period since the last status report and a prospective analysis of any significant future events. They shall also include an assessment of any costs incurred and a summary of the time and labor required for the performance of legal services provided in the matter in the period since the last status report.

The AG hereby invites responsible Offerors to submit competitive sealed proposals to provide attorney and litigation support services specializing in advice and litigation assistance in the following areas that the OAG anticipates:

- a. All aspects of Texas v. New Mexico and Colorado including ancillary actions which have arisen and may arise in other courts but are directly related to Texas v. New Mexico and Colorado.
- b. Texas v. New Mexico and Colorado work may include providing legal advice from time to time on water policy matters of State-wide importance but that may not proceed to litigation, and such other work as directed by the Attorney General and his Assistant Attorneys General.

The AG is seeking proposals from attorneys or law firms with proven experience and expertise, including experience in original jurisdiction water cases before the United States Supreme Court which involve groundwater, reclamation law, and closely related litigation in other forums. **Offerors with specific experience and knowledge of the law of the Rio Grande and personal experience at the United States Supreme Court will be preferred over any Offerors without such experience. Offerors must also be able to work under the direction of the Assistant Attorneys General assigned to this case, as well as coordinate well with other contract lawyers working for the AG.** No contract awarded under this RFP shall guarantee the Offeror any particular volume or amount of business, but it shall be limited only to such work as the AG may refer in his sole discretion. Successful Offerors shall perform contract work on an as-needed basis under direct written authorization from the OAG.

The Scope of Work to be performed by the successful Offeror is more fully described in the sample professional services agreement (“Sample Agreement”), attached to this RFP as Appendix B. A sample of the issues for which legal services may be needed includes providing legal advice, writing briefs, motions, other pleadings, conducting discovery, negotiations, assisting in procuring and analyzing of hydrologic

expert reports, and acting as co-counsel with Assistant Attorneys General, working with state officials as authorized by the AG, development of legal strategies, and preparing and conducting all aspects of authorized litigation such as preparation of pleadings, discovery, case preparation and trial.

C. SCOPE OF PROCUREMENT

The scope of this Request for Proposals (“RFP”) or procurement includes professional services only. In no case will the Professional Services Contract (the “Contract,” “Agreement” or “Professional Services Contract”), including renewals thereof, exceed a total of four (4) years, unless as may be otherwise provided by law. This contract will be effective upon approval by the New Mexico Department of Finance and Administration Contracts Bureau.

D. PROCUREMENT MANAGER

The Attorney General has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, email, address, and telephone number is listed below:

Akash Patel
New Mexico Office of the Attorney General
Administrative Services Division
P.O. Drawer 1508
Santa Fe, New Mexico 87504-1508
Telephone: (505)827-6000
Fax: (505)827-6071
Email: apatel@nmag.gov

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other state employees do not have the authority to respond on behalf of the Attorney General.

E. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout this procurement document.

"Agency" or "OAG" means the New Mexico Office of the Attorney General.

"Close of Business" means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

"Contract" means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful Offeror who enters into a binding contract.

"Determination" means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

"DFA" means the Department of Finance and Administration for the State of New Mexico.

"Evaluation Committee" means a body comprised of members of the Office of the Attorney General and other attorneys selected by the Office of the Attorney General to perform the evaluation of Offeror proposals.

"Finalist" is defined as an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor (as opposed to "desirable"). Failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal.

"Offeror" is any person, corporation, or partnership who chooses to submit a proposal.

"Procurement Manager" means the person or designee authorized by the OAG to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

F. DEADLINE FOR PROPOSALS

Any proposal received in the OAG later than June 20, 2016, will be deemed late and will not be considered. NO EXCEPTIONS TO THIS DEADLINE WILL BE ALLOWED.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsible Party	Due Dates
1. Issue RFP	SPD	May 20, 2016
2. Distribution List	Agency	May 30, 2016
4. Deadline to submit Questions	Potential Offerors	June 2, 2016
5. Response to Written Questions	Procurement Manager	June 6, 2016
6. Submission of Proposal	Potential Offerors	June 20, 2016
7. Proposal Evaluation	Evaluation Committee	June 22, 2016
8. Selection of Finalists	Evaluation Committee	June 27, 2016
9. Best and Final Offers	Finalist Offerors	July 1, 2016
10. Possible Oral Presentation (If needed)	Finalist Offerors	July 1, 2016
11. Finalize Contractual Agreements	Agency/Finalist Offerors	July 8, 2016

12. Contract Awards	Agency/ Finalist Offerors	July 15, 2016
13. Protest Deadline	SPD	July 30, 2016

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A.

1. Issue of RFP

This RFP is being issued by the OAG on May 20, 2016.

2. Distribution List Response Due - MANDATORY

Potential Offerors must hand deliver, return by facsimile, scan and return by electronic mail, or by registered or certified mail, the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document (See Appendix A) to have their organization placed on the procurement distribution list. The form must be signed by an authorized representative of the organization, dated, and returned by close of business on May 30, 2016.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments. **FAILURE TO RETURN THIS FORM SHALL CONSTITUTE A PRESUMPTION OF RECEIPT AND REJECTION OF THE RFP, AND THE POTENTIAL OFFEROR'S ORGANIZATION NAME SHALL NOT APPEAR ON THE DISTRIBUTION LIST.**

3. Deadline to Submit Additional Written Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until close of business June 2, 2016. All written questions must be addressed to the Procurement Manager (See Section I, Paragraph D).

4. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed June 6, 2016 to all potential Offerors whose organization name appears on the procurement distribution list. An Acknowledgement of Receipt Form will accompany the distribution package. The form should be signed by the Offeror's representative, dated, and hand-delivered or returned by facsimile, scanned electronic mail, or by registered or certified mail by the date indicated thereon.

5. Submission of Proposal – MANDATORY DEADLINE

PROPOSALS MUST BE SUBMITTED BY CLOSE OF BUSINESS ON JUNE 20, 2016, TO THE PROCUREMENT MANAGER. Proposals received after this deadline will not be

accepted. Proposals must be labeled on the outside of the package so as to indicate clearly that they are in response to the Texas v. New Mexico and Colorado Request for Proposals.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116, NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

6. Proposal Evaluation

The evaluation of proposals will be performed by an Evaluation Committee comprised of members of the Office of the Attorney General as well as other individuals from other state agencies or from the private sector as determined by the Office of the Attorney General. The Evaluation Committee reserves the right to deem minor irregularities in proposals immaterial. During this time, the Procurement Manager may, at his option, initiate discussions with Offerors for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions shall not be initiated by the Offerors.

7. Selection of Finalists

The Evaluation Committee will select and Procurement Manager will notify the finalist Offerors on June 27, 2016. Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for oral presentations, if any, will be determined at this time.

8. Best and Final Offers from Finalists

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by July 1, 2016. Best and final offers may be clarified and amended at the finalist Offeror's oral presentation (if required).

9. Oral Presentation by Finalists

Finalist Offerors *may* be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each Offeror presentation. All Offeror presentations will be held at the Attorney General's office, Santa Fe, New Mexico. Each presentation, if any, will be limited to two (2) hours in duration.

10. Finalize Contract

The contract will be finalized with the most advantageous Offeror(s) July 8, 2016. In the event that mutually agreeable terms cannot be reached within the time specified, the OAG reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process.

11. Contract Award

The contract shall be awarded to the Offeror whose proposal is most advantageous to the Attorney General. If mutually agreeable terms cannot be reached within the time specified with the initially selected Offeror, the Attorney General reserves the right to finalize a contract with

the next most advantageous Offeror without undertaking a new procurement process. The most advantageous proposal may or may not have received the most points in the evaluation process. The award is subject to appropriate State approvals. Award of the contract will not vest any Offeror with contract rights and any contract will not be binding until contract execution and approval. The contract may be awarded to multiple Offerors, if this would be most advantageous to the Attorney General.

12. Protest Deadline

Any protest by an Offeror must be timely and in conformance with Section 13-1-172, NMSA 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the contract award. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the State Purchasing Agent. The protest must be delivered to the Procurement Manager:

Carla C. Martinez
New Mexico Office of the Attorney General
Administrative Services Division
P.O. Drawer 1508
Santa Fe, New Mexico 87504-1508
505-827-6776 (phone) 505-827-6071 (fax)
408 Galisteo Street
Santa Fe, NM 87501

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

2. Incurring Cost

Any cost incurred by the Offeror in preparation, transmittal, or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the OAG.

4. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The OAG personnel will not merge, collate, or assemble proposal materials.

5. Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

6. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after receipt of a best and final offer if one is submitted.

7. Disclosure of Proposal Contents

To the extent permitted by law, the proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7, NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Procurement Manager shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

8. No Obligation

This procurement in no manner obligates the State of New Mexico or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities, including the Attorney General.

9. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Attorney General determines such action to be in the best interest of the State.

10. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The OAG's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

11. Legal Review

The OAG requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

12. Governing Law

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.

13. Basis for Proposal

Only information supplied by the OAG in writing through the Procurement Manager, or in this RFP, should be used as the basis for the preparation of Offeror proposals.

14. Contract Terms and Conditions

The contract between the Attorney General and a Contractor will follow the format specified by the OAG and contain the terms and conditions set forth in Appendix B, "Professional Services Contract." However, the Attorney General reserves the right to negotiate contract terms with a successful Offeror in addition to or as an alternative to those contained in this RFP and Appendices. **The contract maximum amount in the sample contract may also be reduced prior to contract award, and is simply illustrative of a possible amount rather than a representation that the contract amount will be any particular sum.** The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the contract.

Should an Offeror object to any of the OAG's terms and conditions, as contained in this Section or in Appendix B, that Offeror must propose specific alternative language. The Attorney

General may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Attorney General and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

All contracts for professional services are subject to the review and approval of Department of Finance and Administration ("DFA") pursuant to 13-1-118 NMSA 1978 and DFA Rule 40.2. NMAC.

15. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with the Attorney General.

16. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed between the Attorney General and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

17. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85, NMSA 1978.

18. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

19. Change in Contractor Representatives

The OAG reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Attorney General, meeting the OAG's needs adequately.

20. Notice

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

21. OAG Rights

The OAG reserves the right to accept all or a portion of an Offeror's proposal.

22. Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors and contractors must secure from the Office of the Attorney General written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the contract.

23. Ownership of Proposals

All documents submitted in response to the RFP will become the property of the Attorney General.

24. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

25. Use of Electronic Versions of this RFP

This RFP may be made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Office of the Attorney General, the version maintained by the Office of the Attorney General shall govern.

26. Conflict of Interest.

No attorney should submit a Proposal who has a direct or indirect conflict of interest with a client or an issue. Any attorney submitting a Proposal is, by that submission, warranting to the Attorney General that the attorney has reviewed all possible representational conflicts and finds that there are none.

- a) Any attorney representing a client in a matter adverse to the State of New Mexico or any State officer or agency must identify each such client, and give specific information regarding the representation.

- b) Any attorney whose proposal is accepted is, by submitting the proposal, warranting that the attorney will not, during the course of representation as described in this RFP, undertake to represent any client or advocate any position which would be in conflict with the interests of the Attorney General

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal.

B. NUMBER OF COPIES

Offerors shall deliver five (5) identical copies of their proposal to the location specified in Section I, Paragraph D on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Double sided printing to conserve paper and filing space is preferred, but not mandatory.

1. Proposal Organization

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

- a) Letter of Transmittal
- b) Table of Contents
- c) Proposal Summary
- d) Response to Specifications
- e) Response to Terms and Conditions
- f) Other Supporting Material

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis. The evaluation committee has the discretion to waive minor irregularities.

The proposal summary may be included by Offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be labeled and included as items in a separate appendix.

2. Letter of Transmittal

Each proposal **must** be accompanied by a letter of transmittal. The letter of transmittal **MUST**:

- a) identify the submitting organization;
- b) identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c) identify the name, title, telephone number and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
- d) identify the names, titles, telephone numbers and e-mail addresses of persons to be contacted for clarification;
- e) explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
- f) be signed by the person authorized to contractually obligate the organization;
- g) acknowledge receipt of any and all amendments to this RFP.

IV. SPECIFICATIONS

This section contains relevant information concerning the tasks to be performed by the successful Offeror. Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

A. INFORMATION

1. OAG Resources

The Attorney General will assign staff attorneys to work with the Contractor in developing a work plan, setting up meetings, depositions and discovery, other phases and tasks of litigation, and otherwise facilitating the Contractor's work. This support shall not relieve the Contractor of the primary responsibility for compliance with the contract.

2. Time Frame

The contract work is currently estimated to begin as soon as possible after contract award. The work will continue as needed based on the pace of litigation.

B. MANDATORY SPECIFICATIONS

1. Corporate Experience

A general description of the Offeror's attorneys and their capacities, the nature of the organization (partnership, corporation, sole proprietorship, etc.), years in business, the number of attorneys and other employees, the nature and extent of the organization's support staff, and an updated profile of areas of expertise.

A written statement of the general area (or areas) in which the Offeror is proposing to provide services to the AG in response to the Scope of Work described in part I.

A summary of the Offeror's overall knowledge, experience, and expertise in the area (or areas) for which the proposal is submitted, including a description of sample cases or projects that the Offeror worked on in their proposed area of expertise. Include a top ten list of cases or matters and dates for experience and expertise.

A summary of the Offeror's overall experience as an attorney before the courts of New Mexico, federal courts, administrative bodies, and the United States Supreme Court, particularly in matters related to water law, groundwater, reclamation law, expert hydrologic evidence, original jurisdiction cases, and interstate water litigation.

A list of the Offeror's state attorneys general clients, and a summary of overall experience assisting or representing state attorneys general, and other state agencies and officials, in water law, or other areas of expertise.

2. References

At least three references from past or current clients in complex water matters. Written references must include the name and phone number of a person who may be contacted.

At least two samples of briefs in complex water matters, preferably involving the United States, reclamation law, ground water, and other complex hydrologic evidence submitted by the Offeror to a New Mexico, federal, or other state court.

3. Offeror Staff Experience and Proposed Staff References

A list of the key personnel that the Offeror intends to assign to the performance of a contract with the AG. For each such person, the proposal shall provide at least the following information:

- a) name;

- b) current resume;
- c) brief summary of background, education, membership in professional organizations, special training and awards;
- d) a list of all courts in which the person is admitted to practice (*e.g.*: U.S. Supreme Court, Tenth Circuit, all state courts in New Mexico, etc.);
- e) brief summary of experience as an attorney before administrative bodies and the courts, particularly water disputes and a statement of each attorney's usual and customary hourly billable rate; and
- f) a summary of experience assisting or representing state attorneys general, irrigation districts and other state agencies and officials.

A statement of any malpractice claims of any kind including *pro se* ethics complaints against the Offeror's law firm or attorneys in Offeror's law firm within the last five years and the status or outcomes of each claim.

A statement affirming that no ethics complaints have been filed against Offeror's law firm or any attorneys in Offeror's law firm within the last five years and the status or outcomes of all such complaints.

4. Compensation and Cost

A. The OAG shall pay the Contractor for services satisfactorily performed pursuant to written work orders a total amount not to exceed \$200,000.00 in fiscal year 2017, unless otherwise agreed by the parties. The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall not be paid by the OAG to the Contractor. Payment in subsequent fiscal years is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year.

B. The OAG shall pay the Contractor upon receipt of a detailed statement of accounting for services performed and expenses incurred hereunder. Contractor shall bill the OAG for services rendered on an hourly basis at the rates specified in Exhibit A [*Exhibit A shall be negotiated with successful offerors*] to this Agreement. The hourly fees contained in Exhibit A may be increased during the term of this Agreement after the first full fiscal year, if agreed to by in an amendment to Exhibit A. No person, other than those specifically authorized by the Attorney General to work under this Agreement, shall perform or bill for any services under this Agreement. All travel time shall be billed at one-half (1/2) the hourly fee shown on Exhibit A.

C. If the OAG finds that the services provided under this Contract are unacceptable, it shall, within thirty days after the date of receipt of an invoice from the Contractor, advise the Contractor of its objection to the services, along with details of how the Contractor may proceed to provide remedial action. Upon acceptance by the OAG of the services provided under the Contract, payment shall be tendered to the Contractor within thirty days. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that the OAG has determined that the services have been received and accepted,

late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5% per month.

5. Subcontractors

At least one attorney in Offeror's law firm, who is listed as key personnel in accordance with above, must have a minimum of ten years experience in complex water litigation, including personal experience handling an original jurisdiction case before the United States Supreme Court. If the Offeror intends to submit a proposal and be evaluated with a subcontractor, the proposal shall identify the proposed subcontractor, identify the work that will be assigned to the subcontractor, and provide the information identified above, for subcontractor personnel that will be utilized by the Offeror. The absence of a subcontractor in the proposal does not preclude the parties from amending a contract in accordance with paragraph 9 of the Sample Agreement B, subject to prior written approval by the OAG, to include subcontractors as necessary.

6. Oral Presentation

If selected as a finalist, Offerors agree to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the Evaluation Committee in the finalist notification letter at the oral presentation. A statement of concurrence is required.

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point value assigned to each. These, along with the general requirements, will be used in the evaluation of Offeror proposals.

FACTOR	POINTS AVAILABLE
1. Experience representing states in interstate water cases.....	50%
2. Litigation and administrative experience involving the surface water / groundwater interaction, interstate compacts, reclamation law, and water law; hydrology, federal civil practice, and knowledge of related areas of the law...	10%
3. Legal knowledge, experience, and expertise in the Rio Grande River, its facts and legal history.....	20%
4. References and/or recommendations from past and current clients...	10%
5. Cost proposal for hourly rates and expenses, and ability to provide cost effective services.....	10%

B. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation. In order to ensure that any attorney submitting a proposal has adequate resources to perform the proposed contract, the Evaluation Committee reserves the right to visit and inspect the contractor's facilities, equipment, etc., upon reasonable notice.
4. The responsible Offeror or Offerors are those whose proposal(s) is/are most advantageous to the Office of the Attorney General. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection, regardless of overall score.

VI. APPENDICES

APPENDIX A - Acknowledgement of Receipt Form

REQUESTS FOR PROPOSALS
RFP 16-305-0501-20048
ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix B.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on May 30, 2016. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the OAG's written responses to those questions as well as RFP amendments, if any are issued.

FIRM

REPRESENTED BY

TITLE

PHONE NO.

E-MAIL

FAX NO.

ADDRESS

CITY

STATE:

ZIP CODE

SIGNATURE

DATE

This name, e-mail address, and mailing address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (**circle one**) intend to respond to this Request for Proposals.

APPENDIX B - Sample Professional Services Contract

Contract ID # _____

STATE OF NEW MEXICO
(NAME OF AGENCY)
PROFESSIONAL SERVICES CONTRACT # _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, OFFICE OF THE ATTORNEY GENERAL, hereinafter referred to as the "Agency," and _____ hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration (DFA).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

2. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rates per hour as shown on the attached rate sheet which may be updated in later fiscal years, such compensation not to exceed \$200,000, excluding gross receipts tax, per fiscal year. The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall not be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, excluding gross receipts tax, shall not exceed \$ 200,000 per fiscal year. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rates shown on the attached rate sheet up to a maximum of \$200,000 dollars in FY2017. The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FY2017 shall not be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, excluding gross receipts tax and expenses, shall not exceed \$200,000 in FY2017.**

C. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rates shown on the attached rate sheet in FY2017, depending on availability of funds only. The New Mexico gross receipts tax levied on

the amounts payable under this Agreement in FY2015 shall not be paid by the Agency to the Contractor.

D. Payment in FY2017, FY2018 and FY2019 is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

E. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **June 30, 2019** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. Termination.

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the

Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

D. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as

a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16, NMSA 1978.

Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;
- 2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;
- 4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
- 5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
- 6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency

and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement,

Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage

already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us>.

22. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself. Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

24. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency: Marie Estrada
NM Office of the Attorney General
PO Drawer 1508
Santa Fe, NM 87504-1508
408 Galisteo Street
Santa Fe, NM 87501

To the Contractor: _____

[insert name, address and email].

To the Contractor:
[insert name, address and email].

26. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.

By: _____
Agency

Date: _____

By: _____
Agency's Legal Counsel – Certifying legal sufficiency

Date: _____

By: _____
Agency's Chief Financial Officer

Date: _____

By: _____
Contractor

Date: _____

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 00-000000-00-0

By: _____
Taxation and Revenue Department

Date: _____

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____
DFA Contracts Review Bureau

Date: _____